

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 18, 2009 has been entered.
2. This Office action is in response to Applicant's amendment filed August 18, 2009. Applicant has amended claim 13. New claim 14 has been added. Claim 3 has been cancelled. Currently, claims 1, 2, 4-9 and 11-14 remain pending in the application.
3. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 20080813 and 20090212.
4. The rejection of claims 1, 2, 4-9 and 11-14 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Galleguillos et al, U.S. Patent No. 6,361,768, is maintained for the reasons of record.

5. The rejection of claims 13 and 14 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morschhauser et al, U.S. Patent No. 6,645,476, is maintained for the reasons of record.

### ***Response to Arguments***

6. Applicant's arguments filed August 18, 2009 have been fully considered but they are not persuasive.

Applicant argues that Galleguillos et al, U.S. Patent No. 6,361,768, requires a copolymer that has a  $T_g$  that is greater than about 50 degrees Celsius. Although the examiner agrees with applicant on this point, the examiner respectfully asserts that the instant claims, as presently written, do not have a requirement for the glass transition temperature of the copolymer. Accordingly, the examiner asserts that the copolymers disclosed in Galleguillos et al meet all of the monomer limitations of the instant claims, since Galleguillos et al clearly discloses a hydrophilic ampholytic polymer comprising 35-95 mole percent of at least one nonionic hydrophilic monomer, such as methoxy-polyethyleneoxide-(meth)acrylates (see col. 4, lines 43-46 and col. 7, lines 51-66), and 10-45 mole percent of at least one non-quaternized nitrogen monomer, such as N-vinylpyrrolidone, N-vinylcaprolactam, vinylpyridine, N-vinylformamide, and N-vinylacetamides (see col. 4, lines 40-42 and col. 5, line 41-col. 7, line 19), per the requirements of the instant invention.

Applicant further argues that Galleguillos et al, U.S. Patent No. 6,361,768, requires a copolymer that optionally is cross-linked. However, the examiner respectfully

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disagrees. Specifically, the examiner asserts that Galleguillos et al clearly teaches a copolymer that is not cross-linked (see col. 11, lines 59-61 and col. 40, line 31).

Furthermore, the examiner asserts that the instant claims, as presently written, do not have a requirement that the copolymer must not be cross-linked.

Applicant further argues that Galleguillos et al, U.S. Patent No. 6,361,768, does not teach or suggest in general a copolymer that contains 1-40% by weight of a monomer selected from the group of N-vinylpyrrolidone and N-vinylimidazole, as required by applicant in instant claim 13. However, the examiner respectfully disagrees. Specifically, the examiner asserts that Galleguillos et al clearly discloses a hydrophilic ampholytic polymer comprising 10-45 mole percent of at least one non-quaternized nitrogen monomer, such as N-vinylpyrrolidone (see col. 4, lines 40-42 and col. 5, line 41-col. 7, line 19), per the requirements of instant claim 13.

Initially, with respect to the rejections based upon Morschhauser et al, U.S. Patent No. 6,645,476, the examiner respectfully asserts that only claims 13 and 14 are rejected by this reference. Specifically, the examiner withdrew the rejection of claims 1-9 and 11-12 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morschhauser et al, U.S. Patent No. 6,645,476, in the previous Office action, Paper No. 20090212 (see paragraph number 4 in Paper No. 20090212).

Applicant further argues that Morschhauser et al, U.S. Patent No. 6,645,476, requires that Macromonomer (A) must contain an alkyl radical that contains 10-22 carbon atoms (see col. 3, lines 25-28 of Morschhauser et al), wherein the instant claims

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require an alkyl radical that contains 1-4 carbon atoms. However, the examiner respectfully disagrees. Specifically, with respect to claims 13 and 14, the examiner notes that the variable R<sup>3</sup> includes an alkyl group that contains 1-22 carbon atoms. Therefore, the examiner asserts that instant claims 13 and 14 are anticipated by Morschhauser et al, U.S. Patent No. 6,645,476, for the reasons of record found in the previous Office action, Paper No. 20090212.

### ***Conclusion***

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian P Mruk/  
Primary Examiner, Art Unit 1796

Brian P Mruk  
October 19, 2009

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